

**CALIFORNIA BOARD OF ACCOUNTANCY**

2000 EVERGREEN STREET, SUITE 250
 SACRAMENTO, CA 95815-3832
 TELEPHONE: (916) 263-3680
 FACSIMILE: (916) 263-3675
 WEB ADDRESS: <http://www.dca.ca.gov/cba>



DEPARTMENT OF CONSUMER AFFAIRS
 CALIFORNIA BOARD OF ACCOUNTANCY

FINAL

**MINUTES OF THE
 September 19, 2003
 BOARD MEETING**

Renaissance Hotel
 9620 Airport Boulevard
 Los Angeles, CA 90045
 Telephone: (310) 337-2800
 Facsimile: (310) 216-6681

I. Call to Order.

President Wendy S. Perez called the meeting to order at 8:35 a.m. on Friday, September 19, 2003, at the Renaissance Hotel in Los Angeles. The Board and ALJ Vincent Nafarrette heard Agenda Items X.A-B and then convened into closed session at 10:47 a.m. to deliberate and consider Agenda Items X.C-D. The Board reconvened into open session at 11:45 a.m. and adjourned at 5:06 p.m.

Board Members**September 19, 2003**

| | |
|-----------------------------------|------------------------|
| Wendy S. Perez, President | 8:35 a.m. to 5:06 p.m. |
| Ian Thomas, Vice President | 8:35 a.m. to 5:06 p.m. |
| Joseph Tseng, Secretary-Treasurer | 8:51 a.m. to 5:06 p.m. |
| Ronald Blanc | 8:35 a.m. to 5:06 p.m. |
| Richard Charney | 8:35 a.m. to 5:06 p.m. |
| Charles Drott | 8:35 a.m. to 4:48 p.m. |
| Sally A. Flowers | 8:35 a.m. to 5:03 p.m. |
| Gail Hillebrand | 8:35 a.m. to 5:02 p.m. |
| Thomas Iino | 8:35 a.m. to 5:06 p.m. |
| Clifton Johnson | 8:35 a.m. to 5:06 p.m. |
| Michael Schneider | 8:35 a.m. to 5:06 p.m. |
| Renata Sos | 8:35 a.m. to 5:02 p.m. |
| Stuart Waldman | Absent |
| David Walton | 8:35 a.m. to 5:06 p.m. |

Staff and Legal Counsel

Mary Crocker, Assistant Executive Officer
 Patti Franz, Licensing Manager

Michael Granen, Deputy Attorney General, Board Liaison
Aronna Granick, Legislation/Regulation Analyst
Robert Miller, Legal Counsel
Greg Newington, Chief, Enforcement Program
Doug Reid, Investigative CPA
Theresa Siepert, Executive Analyst
Carol Sigmann, Executive Officer

Committee Chairs and Members

Nancy Corrigan, Member, Qualifications Committee
Olaf Falkenhagen, Chair, Administrative Committee
Paul Koreneff, Chair, Qualifications Committee
Felipe Quezada, Vice Chair, Administrative Committee

Other Participants

Bruce Allen, California Society of Certified Public Accountants (CalCPA)
Tom Chenowith
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)
Mike Duffey, Ernst & Young LLP
Gene Erbstoesser, Ernst & Young LLP
Katy Gould, Society of California Accountants (SCA)
Gregory Kelly
Ann Nelson, California Society of Accounting and Tax Professionals (CSATP)
Cyrus Omead
Sarah Pickeral, Center for Public Interest Law (CPIL)
Abraham Reichman
Richard Robinson, Big 4 Accounting Firms
Hal Schultz, California Society of Certified Public Accountants (CalCPA)
Jeannie Tindel, California Society of Certified Public Accountants (CalCPA)

II. Board Minutes.

A. Draft Board Minutes of the July 25, 2003, Board Meeting.

The draft Board minutes of the July 25, 2003, Board meeting were adopted on the Consent Agenda with the addition of an attachment of the final bullet points sent to the GAO related to audit firm rotation. (See Agenda Item XI.B.)

III. Report of the President.

A. Welcome New Board Member.

Ms. Perez welcomed Mr. Iino to the Board. Ms. Perez noted that he was appointed by Governor Davis on August 19, 2003, and he has been an accountant with Deloitte and Touche LLP since 1983 and is partner-in-charge of the International Practice and the Japanese Practice. Ms. Perez indicated that Mr. Iino was previously a member of the

Ms. Sigmann reported that the Board's proposed changes were grammatical edits. Ms. Perez sought concurrence of the Board that attendees of NASBA's Annual Meeting be able to respond to questions as they see appropriate but not commit the Board to anything. The Board concurred.

It was moved by Mr. Blanc, seconded by Mr. Walton, and carried to approve and communicate to NASBA the proposed changes to NASBA's Bylaws. Mr. Thomas and Mr. Drott were temporarily absent.

B. Consent Agenda.

It was moved by Ms. Hillebrand, seconded by Mr. Johnson, and carried to adopt the consent agenda with the addition of an attachment of the final bullet points sent to the GAO related to audit firm rotation to the July 25, 2003, Board meeting minutes. (See Attachment 10.) Mr. Thomas and Mr. Drott were temporarily absent.

C. Background of the Uniform Accountancy Act (UAA) Related to Substantial Equivalency.

Mr. Schultz made remarks regarding the UAA and substantial equivalency describing the history and purpose of those provisions and the benefits of them.

D. Board Plans for the Last Pencil and Paper Exam.

Ms. Franz reported that the November 2003 Exam would be the last paper and pencil exam and computer-based testing begins in April of 2004. She indicated that the Board plans to commemorate this occasion are:

- ✓ Photos of candidates taken at all sites.
- ✓ An article with the photos included into the next issue of UPDATE.
- ✓ A celebration hosted by the Board staff for the Chief Proctors in appreciation of their years of service.

Ms. Franz invited all Board members to attend the exam in November.

E. Request for Waiver of Licensure Requirements Under Business & Professions Code Section 5087(b) – Abraham Z. Reichman, Personal Appearance.

Ms. Franz reported that Mr. Reichman was requesting the Board to waive the circumstances in which he sat for the CPA Exam in New York. If the Board approves Mr. Reichman's request it will provide him the opportunity to transfer his grades that he earned in New York to

Memorandum

Board Agenda Item XI.C.
September 19, 2003

To : Wendy S. Perez, President
Members, California Board of Accountancy

Date : September 5, 2003

Telephone : (916) 263-3788

Facsimile : (916) 263-3674

E-mail : agranick@cba.ca.gov

From : Aronna Granick 
Legislation/Regulations Coordinator

Subject : Background of the Uniform Accountancy Act (UAA) Related to Substantial Equivalency

Attached are the following documents provided as background information for your consideration of the UAA and "substantial equivalency."

1. Overview of the Uniform Accountancy Act and Substantial Equivalency (prepared with the assistance of Harold Schultz).
2. Comparison of Licensure Requirements (a chart comparing California's requirements with the UAA).
3. Difference Between the UAA and the California Accountancy Act (a general overview).

Additional information will be presented orally at the meeting.

Attachments

OVERVIEW OF THE UNIFORM ACCOUNTANCY ACT AND SUBSTANTIAL EQUIVALENCY

Historical Perspective

A model bill to regulate the practice of public accountancy was first published in 1916. Since 1984, the National Association of State Boards of Accountancy (NASBA) and the American Institute of CPAs (AICPA) have published a joint model bill, now referred to as the Uniform Accountancy Act (UAA). [UAA Preface-i]

In March 1996, a Joint Committee was formed by NASBA and the AICPA to develop consensus on significant regulatory changes for the future. The Joint Committee developed a new regulatory framework intended to protect the public that the profession serves while enhancing interstate reciprocity and practice across state lines by CPAs. [UAA-i]

The UAA is a comprehensive model act, but an effort has been made to make the provisions readily adaptable to being adopted in part. [UAA Introductory Comments-I-1]

Text of the UAA

The full text of the UAA and the related rules is available at <http://www.nasba.org>. From the home page select "publications and speeches;" on that page select "click here to view a list of NASBA's publications"; on that page select "Uniform Accountancy Act and Rules."

Substantial Equivalency

Differing requirements for CPA certification, reciprocity, temporary practice, and other aspects of state accountancy laws in the fifty-four American licensing jurisdictions constitute barriers to the interstate practice and mobility of CPAs. The UAA seeks to eliminate such differences and the barriers that they pose to effective practice of CPAs through the standard of "substantial equivalency" that was added in 1998. [UAA Preface-ii]

Uniformity of the required demonstration of skill and competence among licensees within a given state and those of different states is obviously desirable from the public interest point of view. It is desirable that there be, to the maximum extent feasible, uniformity among jurisdictions with regard to those aspects of the regulatory structure that bear upon the qualifications required of licensees. Because many of the clients or employers of CPAs are multi-state enterprises, much of the practice of CPAs has an interstate character. Consequently, these clients and CPAs are benefited when CPAs are able to move freely between states. The need for interstate mobility and maintenance of high minimum standards of competence in the public interest requires uniform licensing qualifications, insofar as possible, among the states. [UAA Introductory Comments-I-4]

Uniformity may become even more essential in the future as international trade agreements continue to be adopted causing many aspects of the accounting profession to adopt a global focus. [UAA Introductory Comments-I-5]

With respect to the goal of portability of the CPA license and mobility of CPAs across state lines, the cornerstone of the approach recommended by the UAA is the standard of "substantial equivalency" set out in Section 23 (see Attachment A). Under substantial equivalency, a CPA's ability to obtain reciprocity would be simplified and the CPA would have the right to practice in another state without the need to obtain a license in that state unless the CPA relocates his or her principal place of employment in the new state. Individuals would not be denied reciprocity or practice rights because of minor or immaterial differences in the requirements for CPA certification from state-to-state. [UAA Introductory Comments-I-5]

"Substantial equivalency" is a determination by NASBA's National Qualification Appraisal Service that the education, examination and experience requirements contained in the statutes and administrative rules of a jurisdiction are comparable to, or exceed, the education, examination, and experience requirements contained in the UAA or that an individual CPA's education, examination, and experience qualifications are comparable to or exceed those in the UAA. [UAA Section 3(s)]

UAA Provisions for cross-border practice

In order to facilitate interstate practice and free movement of practitioners between states, a provision is made for reciprocal recognition of licenses issued by other states. Those CPAs who meet the substantial equivalency standard may freely practice across state lines without the need for additional licenses. They need only provide notice to the state board of the state in which they want to practice.

In cases in which the requirements of the home state are not in compliance with the UAA and the CPA does not personally meet the UAA's standard for education, exam, and experience, the UAA allows the individual to demonstrate professional experience, exam passage, and continuing education to qualify for licensure. [UAA Section 6(c)]

Reciprocity for those CPAs who establish their principal place of business in another state requires an application process. However, upon a demonstration that the individual's qualifications for the home state's certificate were in compliance with the standards set out in the UAA, a reciprocal license will be issued. [UAA Introductory Comments-I-6 and Sections 6 and 23]

Determinations by NASBA's National Qualification Appraisal Service

NASBA's National Qualification Appraisal Service (NQAS) determines if a state's CPA licensure requirements are substantially equivalent to the Uniform Accountancy Act's requirements. The substantial equivalency concept is commonly referred to as "Section 23" which refers to Section 23 of the UAA (See Attachment A). CPAs who are licensed in substantially equivalent states and who are planning to practice in states that have adopted Section 23 may lawfully practice in those states by notification of intent.

It is the responsibility of the CPA to contact the board of accountancy in the state he or she intends to practice to determine if the state has adopted Section 23 and if it accepts

notifications. Refer to Boards of Accountancy <http://www.nasba.org/nasbambrp.nsf/sbcodes?OpenView&ExpandView> section of the NASBA web site for state board contact information.

Substantially Equivalent States

NASBA's National Qualification Appraisal Service has found 45 of the 54 jurisdictions to have CPA licensure requirements that are substantially equivalent to the UAA's requirements. Also, 23 jurisdictions have adopted the UAA's cross-border practice provisions of Section 23. For a listing of these states, see Attachment B.

California's Current Conformity with the UAA

1. There is no recognition of cross-border practice rights for CPAs who were licensed in accordance with standards that are at least substantially equivalent to the minimum licensing standards of the UAA (see discussion of *substantial equivalency* below). All CPAs must obtain a California license to practice in California.
2. California Licensing Pathway 1 does not meet the minimum licensing standards of the UAA. (The CBA has received formal notification from NASBA that only CPAs licensed under Pathway 2 qualify for "substantial equivalency.")

UAA Provisions for Discipline of CPAs Obtaining Cross-Border Practice Privileges Under Section 23

A CPA practicing in a state under the cross-border practice provisions of Section 23 consents to the disciplinary jurisdiction of the new state. In addition, this CPA is subject to discipline in the CPA's home state for acts committed in the new state. See subsections (a)(3) and (b) of Section 23 (Attachment A). For more information about the UAA disciplinary process, also see Sections 10, 11, and 12 of the UAA (Attachment C).

1 SECTION 23

2 SUBSTANTIAL EQUIVALENCY

3
4 (a)(1) An individual whose principal place of business is not in this state having a valid
5 certificate or license as a Certified Public Accountant from any state which the
6 NASBA National Qualification Appraisal Service has verified to be in substantial
7 equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform
8 Accountancy Act shall be presumed to have qualifications substantially equivalent
9 to this state's requirements and shall have all the privileges of certificate holders
10 and licensees of this state without the need to obtain a certificate or permit under
11 Sections 6 or 7. However, such individuals shall notify the Board of their intent to
12 enter the state under this provision.

13
14 (2) An individual whose principal place of business is not in this state having a valid
15 certificate or license as a Certified Public Accountant from any state which the
16 NASBA National Qualification Appraisal Service has not verified to be in
17 substantial equivalence with the CPA licensure requirements of the AICPA/NASBA
18 Uniform Accountancy Act shall be presumed to have qualifications substantially
19 equivalent to this state's requirements and shall have all the privileges of certificate
20 holders and licensees of this state without the need to obtain a certificate or permit
21 under Sections 6 or 7 if such individual obtains from the NASBA National
22 Qualification Appraisal Service verification that such individual's CPA
23 qualifications are substantially equivalent to the CPA licensure requirements of the
24 AICPA/NASBA Uniform Accountancy Act. However, such individuals shall notify
25 the Board of their intent to enter the state under this provision.

26
27 (3) Any licensee of another state exercising the privilege afforded under this section
28 hereby consents, as a condition of the grant of this privilege:

- 29
30 (a) to the personal and subject matter jurisdiction and disciplinary authority of
31 the Board,
32
33 (b) to comply with this Act and the Board's rules; and,
34
35 (c) to the appointment of the State Board which issued their license as their agent
36 upon whom process may be served in any action or proceeding by this Board
37 against the licensee.
38

39 *COMMENT:* Subsection 23(a)(3) is intended to allow state boards to discipline licensees from
40 other states that practice in their state. Under Section 23(a), State Boards could utilize the
41 NASBA National Qualification Appraisal Service for determining whether another state's
42 certification criteria are "substantially equivalent" to the national standard outlined in the
43 AICPA/NASBA Uniform Accountancy Act. If a state is determined to be "substantially
44 equivalent," then individuals from that state would have ease of practice rights in other states.
45 Individuals who personally meet the substantial equivalency standard may also apply to the

1 National Qualification Appraisal Service if the state in which they are licensed is not
2 substantially equivalent to the UAA.

3
4 Individual CPAs who practice across state lines or who service clients in another state via
5 electronic technology, would not be required to obtain a reciprocal certificate or license if their
6 state of original certification is deemed substantially equivalent, or if they are individually
7 deemed substantially equivalent. The CPA merely must notify the Board of the state in which
8 the service is being performed. However, licensure is required in the state where the CPA has
9 their principal place of business. If a CPA relocates to another state and establishes their
10 principal place of business in that state then they would be required to obtain a certificate in that
11 state. See Section 6(c)(2). Likewise, if a firm opens an office in a state they would be required to
12 obtain a license in that state.

13
14 As it relates to the notification requirement, states should consider the need for such a
15 requirement since the nature of an enforcement complaint would in any event require the
16 identification of the CPA, and a CPA practicing on the basis of substantial equivalency will be
17 subject to enforcement action in any state under Section 23 (a)(3) regardless of a notification
18 requirement.

19
20 Implementation of the "substantial equivalency" standard and creation of the National
21 Qualification Appraisal Service will make a significant improvement in the current regulatory
22 system and assist in accomplishing the goal of portability of the CPA title and mobility of CPAs
23 across state lines.

24
25 **(b) A licensee of this state offering or rendering services or using their CPA title in**
26 **another state shall be subject to disciplinary action in this state for an act committed**
27 **in another state for which the licensee would be subject to discipline for an act**
28 **committed in the other state. Notwithstanding Section 11(a), the Board shall be**
29 **required to investigate any complaint made by the board of accountancy of another**
30 **state.**

31
32 *COMMENT:* This section ensures that the Board of the state of the licensee's principal place of
33 business, which has power to revoke a license, will have the authority to discipline its licensees if
34 they violate the law when performing services in other states and to ensure that the state board of
35 accountancy will be required to give consideration to complaints made by the boards of
36 accountancy of other jurisdictions.

ATTACHMENT B

Substantially Equivalent States

The National Qualification Appraisal Service has found the following 45 jurisdictions to have CPA licensure requirements that are substantially equivalent to the UAA's requirements:

| | | |
|-----------------------|----------------|----------------|
| Alabama* | Kentucky | North Dakota |
| Alaska | Louisiana* | Ohio |
| Arizona | Maine | Oklahoma |
| Arkansas | Maryland | Oregon |
| California** | Massachusetts | Rhode Island |
| Connecticut | Michigan | South Carolina |
| District of Columbia* | Minnesota | South Dakota* |
| Georgia | Mississippi | Tennessee |
| Guam | Missouri* | Texas |
| Hawaii | Montana* | Utah |
| Idaho | Nebraska* | Virginia |
| Illinois* | Nevada | Washington* |
| Indiana | New Jersey | West Virginia* |
| Iowa* | New Mexico | Wisconsin |
| Kansas* | North Carolina | Wyoming* |

*Permit holders only

**CPAs complying with Section 5093 only

Non-Substantially Equivalent States

The National Qualification Appraisal Service has not found the following 9 jurisdictions to have CPA licensure requirements that are substantially equivalent to the Uniform Accountancy Act's.

| | | |
|----------|---------------|----------------|
| Colorado | New Hampshire | Puerto Rico |
| Delaware | New York | Vermont |
| Florida | Pennsylvania | Virgin Islands |

States Which Have Adopted UAA Section 23 Cross Border Practice Rights

| | | |
|-----------|----------------|---------------|
| Arkansas | Minnesota | Rhode Island |
| Idaho | Missouri | South Dakota |
| Illinois | New Hampshire | Tennessee |
| Indiana | New Mexico | Texas |
| Kansas | North Carolina | Virginia |
| Kentucky | North Dakota | Washington |
| Louisiana | Ohio | West Virginia |
| Maine | Oklahoma | |

1 SECTION 10

2 ENFORCEMENT AGAINST HOLDERS OF CERTIFICATES, PERMITS,
3 AND REGISTRATIONS
4

5 (a) After notice and hearing pursuant to Section 12 of this Act, the Board may revoke
6 any certificate, permit, or registration issued under Sections 6, 7 or 8 of this Act or
7 corresponding provisions of prior law or revoke or limit privileges under Section 23
8 of this Act; suspend any such certificate, permit, or registration or refuse to renew
9 any such certificate, permit, or registration for a period of not more than five years;
10 reprimand, censure, or limit the scope of practice of any licensee; impose an
11 administrative fine not exceeding \$1000, or place any licensee on probation, all with
12 or without terms, conditions, and limitations, for any one or more of the following
13 reasons:
14

- 15 (1) Fraud or deceit in obtaining a certificate, permit or registration;
16
- 17 (2) Cancellation, revocation, suspension or refusal to renew a license or privileges
18 under Section 23 for disciplinary reasons in any other state for any cause;
19
- 20 (3) Failure, on the part of a holder of a certificate or permit under Sections 6 or 7
21 or registration under Section 8, to maintain compliance with the requirements
22 for issuance or renewal of such certificate, permit or registration or to report
23 changes to the Board under Sections 6(f) or 7(f);
24
- 25 (4) Revocation or suspension of the right to practice before any state or federal
26 agency;
27
- 28 (5) Dishonesty, fraud, or gross negligence in the performance of services as a
29 licensee or individual granted privileges under Section 23 or in the filing or
30 failure to file one's own income tax returns;
31
- 32 (6) Violation of any provision of this Act or rule promulgated by the Board under
33 this Act or violation of professional standards;
34
- 35 (7) Violation of any rule of professional conduct promulgated by the Board under
36 Section 4(h)(4) of this Act;
37
- 38 (8) Conviction of a felony, or of any crime an element of which is dishonesty or
39 fraud, under the laws of the United States, of this State, or of any other state if
40 the acts involved would have constituted a crime under the laws of this State;
41
- 42 (9) Performance of any fraudulent act while holding a certificate or permit or
43 privilege issued under this Act or prior law;
44
- 45 (10) Any conduct reflecting adversely upon the licensee's fitness to perform services
46 while a licensee, or individual granted privileges under Section 23 and

1 **(11) Making any false or misleading statement or verification, in support of an**
2 **application for a certificate, registration or permit filed by another.**
3

4 *COMMENT:* This provision departs from the typical corresponding provision of accountancy
5 laws now in effect in two respects. One of these is the provision for an administrative fine of up
6 to \$1000, in addition to other possible penalties. There is such a provision in some accountancy
7 laws; whether such a provision is permissible in the laws of other states is a matter for individual
8 determination in each jurisdiction.
9

10 The other departure from the common pattern is in paragraph (10), a catch-all provision which is
11 phrased in terms of conduct reflecting adversely on the licensee's fitness to perform services
12 rather than the broader and vaguer conventional phrase, "conduct discreditable to the accounting
13 profession." This narrower provision is intended to avoid problems of vagueness and
14 overbreadth. A similar change is involved in the requirement of "good moral character" in
15 section 5(b).
16

17 **(b) In lieu of or in addition to any remedy specifically provided in subsection (a) of this**
18 **Section, the Board may require of a licensee--**
19

20 **(1) A peer review conducted in such fashion as the Board may specify; and/or**
21

22 **(2) Satisfactory completion of such continuing professional education programs as**
23 **the Board may specify.**
24

25 *COMMENT:* This subsection is intended to provide rehabilitative remedies for enforcement
26 proceedings against licensees, in addition to (or in place of) the more traditional punitive
27 remedies provided in subsection (a). The term "peer review" is defined in section 3(m).
28

29 **(c) In any proceeding in which a remedy provided by subsections (a) or (b) of this**
30 **Section is imposed, the Board may also require the respondent licensee to pay the**
31 **costs of the proceeding.**
32

33 *COMMENT:* This provision appears appropriate in terms of both equity and the economics of
34 Board operations.

1 **SECTION 11**

2 **ENFORCEMENT PROCEDURES--INVESTIGATIONS**

3
4 (a) The Board may, upon receipt of a complaint or other information suggesting
5 violations of this Act or of the rules of the Board, conduct investigations to
6 determine whether there is probable cause to institute proceedings under Sections
7 12, 15, or 16 of this Act against any person or firm for such violation, but an
8 investigation under this Section shall not be a prerequisite to such proceedings in
9 the event that a determination of probable cause can be made without investigation.
10 In aid of such investigations, the Board or the chairperson thereof may issue
11 subpoenas to compel witnesses to testify and/or to produce evidence.

12
13 (b) The Board may designate a member, or any other person of appropriate
14 competence, to serve as investigating officer to conduct an investigation. Upon
15 completion of an investigation, the investigating officer shall file a report with the
16 Board. The Board shall find probable cause or lack of probable cause upon the basis
17 of the report or shall return the report to the investigating officer for further
18 investigation. Unless there has been a determination of probable cause, the report of
19 the investigating officer, the complaint, if any, the testimony and documents
20 submitted in support of the complaint or gathered in the investigation, and the fact
21 of pendency of the investigation shall be treated as confidential information and
22 shall not be disclosed to any person except law enforcement authorities and, to the
23 extent deemed necessary in order to conduct the investigation, the subject of the
24 investigation, persons whose complaints are being investigated, and witnesses
25 questioned in the course of the investigation.

26
27 (c) Upon a finding of probable cause, if the subject of the investigation is a licensee or
28 an individual with privileges under Section 23 of this Act, the Board shall direct that
29 a complaint be issued under Section 12 of this Act, and if the subject of the
30 investigation is not a licensee or an individual with privileges under Section 23, the
31 Board shall take appropriate action under Sections 15 or 16 of this Act. Upon a
32 finding of no probable cause, the Board shall close the matter and shall thereafter
33 release information relating thereto only with the consent of the person or firm
34 under investigation.

35
36 (d) The Board may review the publicly available professional work of licensees or an
37 individual with privileges under Section 23 of this Act on a general and random
38 basis, without any requirement of a formal complaint or suspicion of impropriety.
39 In the event that as a result of such review the Board discovers reasonable grounds
40 for a more specific investigation, the Board may proceed under subsections (a)
41 through (c) of this Section.

42
43 *COMMENT:* This provision contemplates "positive enforcement," which is to say review of the
44 professional work of licensees without any triggering requirement of receipt of complaints.

1 SECTION 12

2 ENFORCEMENT PROCEDURES--HEARINGS BY THE BOARD

3
4 (a) In any case where probable cause with respect to a violation by a licensee or an
5 individual with privileges granted under Section 23 of this Act has been determined
6 by the Board, whether following an investigation under Section 11 of this Act, or
7 upon receipt of a written complaint furnishing grounds for a determination of such
8 probable cause, or upon receipt of notice of a decision by the Board of Accountancy
9 of another state furnishing such grounds, the Board shall issue a complaint setting
10 forth appropriate charges and set a date for hearing before the Board on such
11 charges. The Board shall, not less than 30 days prior to the date of the hearing,
12 serve a copy of the complaint and notice of the time and place of the hearing upon
13 the licensee or an individual with privileges granted under Section 23 of this Act,
14 together with a copy of the Board's rules governing proceedings under this Section,
15 either by personal delivery or by mailing a copy thereof by registered mail to the
16 licensee at the licensee's address last known to the Board. In the case of an
17 individual exercising privileges under Section 23, service shall be by registered mail
18 to the address last known to the Board, or pursuant to Section 23(a)(3)(c).

19
20 (b) A licensee or an individual with privileges under Section 23, against whom a
21 complaint has been issued under this Section shall have the right, reasonably in
22 advance of the hearing, to examine and copy the report of investigation, if any, and
23 any documentary or testimonial evidence and summaries of anticipated evidence in
24 the Board's possession relating to the subject matter of the complaint. The Board's
25 rules governing proceedings under this Section shall specify the manner in which
26 such right may be exercised.

27
28 *COMMENT:* Although the procedures followed by many Boards of accountancy now include,
29 on either a formal or an informal basis, prehearing disclosure to the respondent of the evidence
30 that will be offered in support of a complaint, it seems desirable to embody so fundamental a
31 procedural right in the governing statute.

32
33 (c) In a hearing under this Section the respondent licensee or an individual with
34 privileges granted under Section 23 may appear in person (or, in the case of a firm,
35 through a partner, officer, director, shareholder, member or manager) and/or by
36 counsel, examine witnesses and evidence presented in support of the complaint, and
37 present evidence and witnesses on the licensee's or an individual's own behalf. The
38 licensee or an individual granted privileges under Section 23 shall be entitled, on
39 application to the Board, to the issuance of subpoenas to compel the attendance of
40 witnesses and the production of documentary evidence.

41
42 (d) The evidence supporting the complaint shall be presented by the investigating
43 officer, by a Board member designated for that purpose, or by counsel. A Board
44 member who presents the evidence, or who has conducted the investigation of the
45 matter under Section 11 of this Act, shall not participate in the Board's decision of
46 the matter.

1 *COMMENT:* The provision disqualifying a Board member who presents the evidence or who
2 has investigated the case from participating in the Board's decision of the case again reflects
3 common practice, but like subsection (b) it appears to involve a sufficiently fundamental point to
4 merit explicit mention in the statute. The purpose is, of course, to separate the prosecutorial and
5 adjudicative functions of the Board.

6
7 Some or all of the procedural matters of this kind included in this Uniform Act may be dealt with
8 by statutes of general applicability, such as Administrative Procedure Acts, and so be
9 unnecessary for inclusion in an accountancy law.

10
11 **(e) In a hearing under this Section the Board shall be advised by counsel, who shall not**
12 **be the same counsel who presents or assists in presenting the evidence supporting**
13 **the complaint under subsection (d) of this Section.**

14
15 *COMMENT:* The comments under subsection (d) are applicable here also. It should be noted
16 that this provision would not require two lawyers in all cases: It simply requires that if there is
17 counsel involved in presenting the complaint, in addition to counsel advising the Board, it must
18 not be the same counsel. If there were two counsel, they might both be provided by the state
19 attorney general's office, so long as they were firmly insulated from each other.

20
21 **(f) In a hearing under this Section the Board shall not be bound by technical rules of**
22 **evidence.**

23
24 **(g) In a hearing under this Section a stenographic or electronic record shall be made**
25 **and filed with the Board. A transcript need not be prepared unless review is sought**
26 **under subsection (j) of this Section or the Board determines that there is other good**
27 **cause for its preparation.**

28
29 **(h) In a hearing under this Section a recorded vote of a majority of all members of the**
30 **Board then in office (excluding members disqualified by reason of subsection (d) of**
31 **this Section) shall be required to sustain any charge and to impose any penalty with**
32 **respect thereto.**

33
34 **(i) If, after service of a complaint and notice of hearing as provided in subsection (a) of**
35 **this Section, the respondent licensee fails to appear at the hearing, the Board may**
36 **proceed to hear evidence against the licensee or an individual granted privileges**
37 **under Section 23 and may enter such order as it deems warranted by the evidence,**
38 **which order shall be final unless the licensee or an individual granted privileges**
39 **under Section 23 petitions for review thereof under subsection (j) of this Section,**
40 **provided, however, that within thirty days from the date of any such order, upon a**
41 **showing of good cause for the licensee's or an individual's failure to appear and**
42 **defend, the Board may set aside the order and schedule a new hearing on the**
43 **complaint, to be conducted in accordance with applicable subsections of this**
44 **Section.**

45
46 **(j) Any person or firm adversely affected by any order of the Board entered after a**
47 **hearing under this Section may obtain review thereof by filing a written petition for**

1 review with the _____ Court within thirty days after the entry of said order. The
2 procedures for review and the scope of the review shall be as specified in [State
3 Administrative Procedure Act, or other statute providing for judicial review of
4 actions of administrative agencies].
5

6 *COMMENT:* This provision would depart from the pattern of some accountancy laws now in
7 effect in providing that, where a decision of the Board is appealed to a court, the court will not
8 conduct a trial de novo but rather will review the Board's decision on the same basis as
9 ordinarily applies in cases of judicial review of decisions by administrative agencies: That is,
10 reversal will be based on errors of law or procedure, or on a lack of substantial evidence to
11 support factual determinations. If in a given state there is no Administrative Procedure Act or
12 analogous statute, it will be necessary to spell out the standards and procedures in this provision.
13

14 The right of appeal is not limited to persons or firms against whom disciplinary proceedings are
15 specifically directed but includes anyone who is "adversely affected." Thus, for example, a
16 partner in a firm that was subjected to discipline in a given case, or a firm of which a partner was
17 disciplined, might be adversely affected by the Board's order so as to be entitled to appeal it.
18

19 (k) In any case where the Board renders a decision imposing discipline against a
20 licensee or an individual granted privileges under Section 23 of this Act under this
21 Section and Section 10 of this Act, the Board shall examine its records to determine
22 whether the licensee holds a certificate or a permit in any other state; and if so, the
23 Board shall notify the Board of Accountancy of such other state of its decision, by
24 mail, within forty-five days of rendering the decision. The Board may also furnish
25 information relating to proceedings resulting in disciplinary action to other public
26 authorities and to private professional organizations having a disciplinary interest
27 in the licensee. Where a petition for review has been filed pursuant to Section 12(j),
28 the notification and furnishing of information provided for in this subsection shall
29 await the resolution of such review and, if resolution is in favor of the licensee or an
30 individual granted privileges under Section 23 of this Act, no such notification or
31 furnishing of information shall be made.
32

33 *COMMENT:* The forty-five-day period of delay here specified, before a Board which has
34 rendered a disciplinary decision on a certificate, registration, or permit notifies Boards of other
35 states of the decision, is intended to be longer than the period for the filing of an appeal to the
36 courts from a decision of the Board and thus to avoid requiring such notification in cases where
37 an appeal has been taken but not yet resolved. The period for taking such an appeal is specified
38 in section 12(j) as thirty days, which accounts for the forty-five-day period here. If the time for
39 filing such an appeal specified in the accountancy law (or in a statute of general applicability)
40 was other than thirty days, the period appropriate for this provision might differ correspondingly.

COMPARISON OF LICENSURE REQUIREMENTS

| | Education at Exam | Core Course Requirement | Education for Licensure | | Experience For Licensure | | Ethics Exam | Fingerprint | Continuing Education (CE) | Verification of Grades | Verification of License Status |
|--|--|--|---------------------------|----------------------------|--|---|--------------------------------|--------------|--|--|--|
| California Applicants and Out-of-state (Non-Licensee) Grades Transfer | Baccalaureate (BA) or higher degree | 24 semester units of accounting 24 semester units of business-related | P1 BA | P2 BA and 150 units | P1 2 years and 500+ attest hours to sign attest reports | P2 1 year and 500+ attest hours to sign attest reports | Passing score of 90% or higher | Required | May be required to complete 48 hour pattern if qualifying experience was obtained more than 5 years ago | Required when applicable under current application process | Not applicable |
| Out-of-state Licensed Certified Public Accountants (CPAs) | Baccalaureate (BA) or higher degree | 24 semester units of accounting 24 semester units of business-related | P1 BA | P2 BA and 150 units | P1 2 years and 500+ attest hours to sign attest reports <i>(Out-of-state experience accepted if licensed and practicing 4 of the preceding 10 years)</i> | P2 1 year and 500+ attest hours to sign attest reports | Passing score of 90% or higher | Required | May be required to complete 48 hour pattern if qualifying experience was obtained more than 5 years ago <i>(Evidence of 80 hours of CE and valid license to practice required to qualify for 120 day temporary practice rights)</i> | Required under current application process | Required under current application process |
| Uniform Accountancy Act (UAA) Applicants (Non-Licensee) | Baccalaureate (BA) or higher degree and 150-semester units | 24 semester units of accounting 24 semester units of business-related | BA and 150-semester units | | 2,000+ hours during 1 – 3 year period | | Not required | Not required | | Unknown | Not applicable |

| | Education at Exam | Core Course Requirement | Education for Licensure | Experience For Licensure | Ethics Exam | Fingerprint | Continuing Education (CE) | Verification of Grades | Verification of License Status |
|---|-------------------|-------------------------|-------------------------|---|--------------|--------------|--|------------------------|--------------------------------|
| UAA Out-of-state Licensed CPAs Who Do Not Qualify Under Section 23 | Not Required | Not Required | Not Required | Out-of-state experience accepted if licensed and practicing 4 of the preceding 10 years | Not required | Not required | 120 hours of CE in preceding 3 years to qualify for 90 day temporary practice rights | Unknown | Unknown |

Comment: Individuals who passed the November 2001 or prior Uniform CPA Examination may make up education deficiencies to satisfy Pathway 1 or Pathway 2 licensure requirements providing they apply and qualify for licensure by December 31, 2005.

DIFFERENCES BETWEEN THE UAA AND THE CALIFORNIA ACCOUNTANCY ACT

- The UAA requires that exam applicants complete 150 hours of education before sitting for the exam. California law requires 120 semester units to sit for the exam. Pathway 2 applicants must have 150 semester units (150 hours) to qualify for licensure.
- The UAA does not require that licensure applicants pass an ethics exam or provide fingerprints.
- The UAA requires that all licensure applicants have a minimum of one year of experience. California law requires two years of experience for Pathway 1 applicants.
- The UAA has no attest experience requirement. California law requires 500 hours of attest experience in order to sign attest reports.
- The UAA requires that a sole proprietor, partnership, corporation, or any other legally authorized accountancy business be licensed as a firm if it uses "CPA" in the firm name or provides attest services. California law requires all partnerships and professional corporations (but not sole proprietors) to be licensed regardless of the firm name or the public accounting services it provides.
- The UAA permits both commissions and referral fees. California law permits commissions but not referral fees.
- The UAA has provisions limiting the liability of public accounting firms (Sections 20-22). California law has no such provisions.
- The UAA has Section 23 permitting licensees to practice in other states that have licensure requirements "substantially equivalent" to the UAA without receiving a license in that state. California law has no such provisions.
- The UAA does not have California's NEW self-reporting and audit documentation requirements. However, it does have a rule on internet practice.

AICPA and NASBA Announce New UAA Rule-Setting Process

The American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy have agreed to a more streamlined process by which *Rules* for the Uniform Accountancy Act (UAA) will be written and adopted.

The change takes place in a new regulatory era and will result in a system that allows for development of model rules in a timelier manner. The UAA Model Rules assist the state boards of accountancy in coordinating state legislation to facilitate interstate commerce. While it can take years for a state's accountancy act to be changed, the state boards have the ability to enforce new rules in a matter of months. The new process recognizes the state boards' power to exercise their rulemaking authority without passing through legislative debate.

Under the new process, NASBA will have authority for approving and finalizing the UAA Rules, with the AICPA retaining a significant role in the process. While the UAA Rules will no longer be a joint AICPA/NASBA endeavor, the AICPA will continue to support the Rules process with staff and technical resources and the AICPA's UAA Committee members also will devote time to the Rules process. Moreover, AICPA and NASBA will continue to work jointly on the UAA statute.

The two organizations view this change as a natural transition inasmuch as NASBA represents the accountancy boards that have the responsibility for writing and promulgating accounting rules in the 54 jurisdictions that regulate the accounting profession for the public's protection.

The Uniform Accountancy Act and Rules has evolved since 1984, when the AICPA and NASBA published the first joint model bill, which was renamed the Uniform Accountancy Act. Later versions of the UAA also included UAA rules that were intended to add specificity to model statute provisions.

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